

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x

LEIGHTON SEOW,

98 CV 72

Petitioner,

MEMORANDUM

AND

- against -

ORDER

CHRISTOPHER ARTUZ, Superintendent,

Respondent.

-----x

LEIGHTON SEOW  
90-T-4810  
Greenhaven Corr. Fac.  
Drawer B  
Stormville, New York 12582  
Petitioner pro se.

CHARLES J. HYNES  
District Attorney, Kings County  
400 Municipal Building  
210 Joralemon Street  
Brooklyn, New York 11201

NICKERSON, District Judge:

On January 5, 1998, petitioner pro se brought this proceeding for a writ of habeas corpus challenging his conviction and sentence pursuant to 28 U.S.C. § 2254.

Petitioner was convicted in New York Supreme Court, Kings County, of two counts of Aggravated Assault upon a Police Officer, one count of Robbery in the First Degree, and one count of Criminal Possession of a Weapon in the Second Degree. He was sentenced to consecutive prison terms of twelve and one-half to twenty-five years on each assault and robbery count, to run concurrently with a prison term of five to fifteen years on the weapon possession count.

Petitioner appealed his judgment of conviction to the Appellate Division, Second Department, claiming that the trial court improperly declined to charge justification, that his guilt was not proved beyond a reasonable doubt, and that his consecutive sentences should have run concurrently. The Appellate Division affirmed the conviction on June 7, 1993. People v. Seow, 599 N.Y.S.2d 47 (2d Dep't 1993).

By letters dated June 23, 1993 and July 21, 1993, petitioner sought leave to appeal to the New York Court of Appeals. That request was denied on August 25,

1993. People v. Seow, 82 N.Y.2d 726, 602 N.Y.S.2d 823 (1993).

On September 15, 1996 petitioner moved in New York Supreme Court, Kings County, pursuant to New York Criminal Procedure Law § 440.10(1)(h) to vacate his judgment of conviction, claiming that his trial counsel was ineffective. The motion was denied on March 5, 1997.

Petitioner applied for leave to appeal to the Appellate Division on April 2, 1997. His application for leave to appeal was denied on April 25, 1997. Petitioner then applied to the New York Court of Appeals for leave to appeal. That request was denied on September 9, 1997 on the ground that the order sought to be appealed was not appealable under New York Criminal Procedure Law § 450.90(1).

Petitioner's application for a writ of habeas corpus was filed with the Court on December 23, 1997. He raises four claims: (1) that the trial court improperly refused his request for a justification

charge; (2) that his consecutive sentences are illegal under state law; (3) that he was denied effective assistance of counsel at trial because trial counsel failed to interview or produce witnesses to support petitioner's claim of justification; and (4) that his guilt was not proved beyond a reasonable doubt.

I

Respondent seeks to have the petition dismissed as untimely under 28 U.S.C. § 2244(d)(1). The Antiterrorism and Effective Death Penalty Act (the Act), Pub. L. No. 104-132, 110 Stat. 1214, 1220 (1996), amended 28 U.S.C. § 2244 to require that a habeas petition be filed no later than one year after the date on which a judgment of conviction becomes final by the conclusion of direct review. See 28 U.S.C. § 2244(d)(1)(A). The Act became effective on April 24, 1996.

In cases where a judgment of conviction becomes final prior to the effective date of the Act a

petitioner must be accorded at least a "reasonable time" from the effective date of the Act to file a habeas petition. Peterson v. Demskie, 107 F.3d 92, 93 (2d Cir. 1997). The court in Peterson noted that in cases where a prisoner has had several years to contemplate bringing a habeas petition, it saw "no need to accord a full year" after the effective date of the Act. Id.

The conviction in this case became final on August 25, 1993. This petition was filed on December 23, 1997, twenty months after the Act became effective, over four years after the conviction became final, and six months after the petition for collateral relief became final. Petitioner did not file here within a "reasonable time."

The Court has no occasion to consider whether petitioner's application for collateral relief can be used to revive a right to federal relief which otherwise would be time barred under the Act, thus

evading the intent of the new law. But see Valentine  
v. Senkowski, 966 F. Supp. 239, 240 (S.D.N.Y. 1997).

The petition is untimely. The motion to dismiss  
is granted. A certificate of appealability is denied.

So ordered.

Dated: Brooklyn, New York  
June 10, 1998

Eugene H. Nickerson  
Eugene H. Nickerson, U.S.D.J.